

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA,)	
Plaintiff,)	
)	
v.)	
)	Case No. 4:19-cv-00415
ALEXANDRU BITTNER,)	
Defendant.)	
_____)	

SECOND JOINT STIPULATION

The Plaintiff United States and Defendant Alexandru Bittner jointly stipulate that Defendant is not entitled to a jury trial on his Third defense, (arbitrary and capricious)¹ as set forth in his amended answer, ECF # 13.²

The United States and Defendant Alexandru Bittner jointly stipulate that the Defendant is entitled to a jury trial on the number of foreign accounts that Defendant was required to report on his Form TD F 90-22.1, "Report of Foreign Bank and Financial Accounts," for the 2007, 2008, 2009, 2010 and 2011 years.

¹ The parties have filed respective motions for partial summary judgment as to Bittner's defense that the assessed FBAR penalties exceed the statutory cap. *See* ECF Nos. 28, 29.

² The parties previously stipulated that the Defendant is not entitled to a jury trial on the issues of whether under 31 U.S.C. § 5321(a)(5) the maximum non-willful FBAR penalty of \$10,000 is a per form or per account violation, whether the IRS acted in violation of the Administrative Procedure Act ("APA"), whether the assessed FBAR penalties constitute unconscionable punishment, whether the assessed FBAR penalties constitute an improper criminal sanction and whether the assessed FBAR penalties violate the Excessive Fines Clause of the Eighth Amendment of the U.S. Constitution. *See ECF #35.*

The United States and Defendant Alexandru Bittner jointly stipulate the Defendant is entitled to a jury trial on whether he had reasonable cause under 31 U.S.C. § 5321(a)(5)(B)(ii) regarding the 2007-2011 FBAR penalties assessed against him.

Respectfully submitted,

RICHARD E. ZUCKERMAN
Principal Deputy Assistant Attorney General

/s/ Herbert W. Linder
HERBERT W. LINDER
Ohio Bar No. 0065446
Attorneys, Tax Division
U.S. Department of Justice
717 N. Harwood St., Suite 400
Dallas, Texas 75201
Phone: (214) 880-9754/2432
Fax (214) 880-9741
herbert.w.linder@usdoj.gov

ATTORNEYS FOR UNITED STATES

/s/ Rachael Rubenstein
RACHAEL RUBENSTEIN
State Bar No. 24073919
CLARK HILL STRASBURGER
2301 Broadway St.
San Antonio, Texas 78215
Ph. (210) 250-6006
Fax (210) 258-2714
RRubenstein@clarkhill.com

ATTORNEY FOR DEFENDANT
ALEXANDRU BITTNER

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing stipulation has been made on
June 15, 2020, by the Clerk's ECF filing system to:

CLARK HILL STRASBURGER
Farley P. Katz
Rachael Rubenstein
2301 Broadway St.
San Antonio, Texas 78209

/s/ Herbert W. Linder
HERBERT W. LINDER